8. Shri Gurudas Das Gupta
9. Shri Amar Singh "
10. Shri Balwant Singh Ramoowalia

with instructions to report to the Rajya Sabha by the first day of the next session.

The question was put and the motion was adopted

SHRI YASHWANT SINHA: Madam, I would also like to submit that we would like the Foreign Exchange Management Bill to be discussed in this House, as distinct from the Money-Laundering Bill and after the discussion we would like the Bill to be passed.

THE DEPUTY CHAIRMAN: Okay. Now, we will discuss the Foreign Exchange Management Bill, 1999. Shri N. K P. Salve will continue.

THE FOREIGN EXCHANGE MANAGEMENT BILL, 1999 -- Contd.

SHRI N. K P. SALVE (Maharashtra): Madam Deputy Chairperson, I must congratulate the hon. Finance Minister for agreeing to refer the Money-Laundering Bill to a Select Committee, for the very simple reason that there is a distinction between the FEMA and the Money-Laundering Bill, and I am making this point... *(Interruptions)*

SOME HON. MEMBERS: Madam, we are unable to hear. The mikes are off.

THE DEPUTY CHAIRMAN: Just one minute, Mr. Salve. Let me get the mikes on. We will wait for two minutes. Please sit down, Mr. Salve. Let me find out what the problem is.

SHRI N.K.P. SALVE : Madam, I am told that it is working now.

THE DEPUTY CHAIRMAN : Partially. This is not working.

SHRI N.K.P. SALVE : Madam, I was submitting that I heartily commend the approach and the attitude of the Finance Minister in referring the Money-Laundering Bill to a Select Committee, and taking the FEMA Bill straight way for discussion here. Madam, to keep the record straight, I

would submit as to what the distinction is in these two bills, so far as we are concerned. So far as the Money- Laundering Bill is concerned, our grievance has been that the main recommendation of the Finance Committee which had deliberated over this Bill for days, for hours, after listening to the evidence of concerned people, Chambers of Commerce, Confederation of Industries, experts, officials of the Reserve Bank of India, officials of the Ministry of Finance — and many of them agreed with the Bill when we asked them questions, our apprehensions and doubts which had been raised about the Money -Laundering Bill ~ has not been accepted. The grievance is that a new class of offences was sought to be created under the garb of preventing money- laundering. In fact, money- laundering, as such, was not even taken care of. That was the grievance, Madam. Therefore, now that it is going to the Select Committee, we will be able to make our submissions there.

So far as the FEMA Bill is concerned, most of the recommendations made by the Standing Committee have been accepted, and it is a very commendable and welcome measure, excepting that is long overdue.

Madam, so far as the FEMA Bill is concerned, I have only two clauses to refer to, and I want to make a very brief speech. The first point relates to the clause which describes 'person resident in India[1]. Madam, 1 am referring to the definition clause[1], clause 2, sub-clause (v):

"Person resident in India means-

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-

(A) a person who has gone out of India or who stays outside India, in either case-

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than-

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

(ii) any person or body corporate, etc., etc."

Madam, when the Standing Committee considered this particular clause, originally, as it was framed, it was extremely concerned about it, and we thought that the purpose of the law will be defeated if it remained in the original form. It has been amended very substantially, in accordance with the recommendations. *(Interruptions)...* I would like to disturb my erstwhile friend, Shri Pramod Mahajan.

THE DEPUTY CHAIRMAN : Still he is your friend?

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION TECHNOLOGY(SHRI PRAMOD MAHAJAN): Friends are permanent.

THE DEPUTY CHAIRMAN : Not in politics.

SHRI N.K.P. SALVE : Madam, my submission is, we were extremely concerned about the definition of 'person resident in India,' as it was provided in the original Bill. We deliberated over it and we made certain recommendations. Some additions have been made, and it has been accepted. A substantial part of the recommendations made have been incorporated in this Bill; we thank the Finance Minister for that.: However, there is one very grave lacuna. I would want the Finance Minister to consider it. It is, in this Bill, no distinction seems to have been made between a person who is a citizen of India and a person who is not a citizen of India. Now, that is likely to lead to a very serious discrimination, in certain circumstances. I have one particular instance in my mind, which I would urge upon, through you, Madam, the Finance Minister to consider whether or not it will be discriminatory. Supposing a doctor, an Indian

citizen, who has settled in England, comes to India and practices for 11 months and goes back. He is out of the purview of this clause. He is not a person resident in India and the result will be, whatever earnings he has made in India, subject to taxation, etc. will be repatriated. He will be able to take his earnings and this FEMA will not be applicable to him. Take the case of another doctor, an Indian citizen, practising here for eleven months, and, for a month, going to the U.K. To him, the entire FEMA will be applicable. Therefore, I submit to the Finance Minister to consider it and consider my suggestion very seriously. It is a very serious lacuna. That distinction has not been made while determining the person resident in India because applicability of the law depends on whether a person is resident in India or he is not in India. If he is a person not resident in India, then the law does not apply. If he is a resident in India, the law is applicable and, therefore, this distinction, in my opinion, is, extremely important.

Madam, the second point I would like to refer to and urge very strongly, so far as it is concerned, with reference to sunset provision, 'repeal and saving.' I refer to clause 49(3), Madam, which is a non-option clause, which states: "Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act, i.e., FERA, and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of next two years from the date of the commencement of this Act. " This means, for a period of two years, we continue to be within the application of FERA.

My submission is, Madam, it is belated and it has come a day too late This Bill has been brought forward for two-three objects basically: In furtherence of the economic liberalisation, related specially to foreign investment and external trade, and in view of the very comfortable foreign exchange position, FERA has been repealed and this Bill has been brought forward. Earlier, it was more of regulation and now, in this Bill, it is the management of the foreign exchange which is important. This should have been done by Dr. Manmohan Singh, as early as in 1994 or 1995. We are already late by four years. It is well admitted that if one were to read the objects, one will understand how belated this particular enactment is. Now, something which should have been anacted two-three years ago — is sought to be delayed by two years. It is very unfair, Madam. It is not practical. It will not serve and subserve the cause and the objects for which this Bill has

been brought out. I submit, you give 15 days or a month or two months or three months' time for the officials to complete there investigation, if they are already investigating some cases. Had you given time of few months to FERA one would have understood. You can wait for a while. If some proceedings have been initiated already and pending before courts, one would have understood the need to extend FERA for a period of two years. In the present form two years extension would be wholly counter-productive and is entirely opposed to the very objective of this Bill. Therefore, I submit, Madam, so far as this part of the Bill, sub-clause (3) of clause {49) is concerned, the Finance Minister should be agreeable to look into it and see how best we can take care of the Bill.

SHRI T.N. CHATURVEDI (Uttar Pradesh): Madam Deputy Chairperson, I rise to support the Foreign Exchange Management Bill, 1999, which was moved by the hon. Finance Minister yesterday along with the Prevention of Money Laundering Bill, 1999. According to me, the two are complementary. As has been well pointed out by Mr. Salve, the process of globalisation has initiated a change as regards the FERA,

which was considered very restrictive and a draconian law. There were even complaints at different points of time that it was being misused, etc. This is the point which one need not go into. Apart from that, the economic environment as such has changed. This point has been mentioned by Mr. Salve and also has been mentioned by the Finance Minister himself in the Statement of Objects and Reasons. If I refer particularly to the first Para of the Statement of Objects and Reasons, I find that it is true that the Foreign Exchange Regulation Act was reviewed in 1993 and certain amendments of a fairly comprehensive nature in order to make it rigorous were made. But due to the subsequent developments, as has been mentioned, and due to an experience gained in relation to foreign trade and investment, certain other changes were called for. Dr. Manmohan Singh, the then Finance Minister, himself appointed a Task Force. After the Task Force had submitted its report, it was felt particularly to have the advice of the Law Ministry which advised that it would be much better to replace the entire Act. Therefore, this particular Bill which was first introduced in the 12th Lok Sabha was referred to the Standing Committee on Finance. As has been mentioned, many of the recommendations of the Standing Committee on Finance were taken into account. The similar was the case with the Money Laundering Bill. Somehow or the other, I feel that

the two bills are complementary. It was at a particular point of time that the FERA was called for, may be, because of the shortage of foreign exchange, or maybe, because certain transactions, etc., etc., were taking place which were inimical and detrimental to the interests of this country. In a way, I personally felt - and this is my personal opinion - that this matter has been discussed; both the Bills should have been discussed together. Though I do not want to discuss the other Bill, the background of it one cannot ignore. When both the Bills were to be discussed it was felt that in the light of the experience of the FERA probably there was need for softening it so that it may send positive signals to the trade and industry within the country and also create a positive climate of confidence so far as the international investor is concerned. One of the really remarkable changes or the structural changes or the basic changes that it has made is that though it also again seems to restrict the foreign exchange transaction between an Indian and a non-Resident Indian or a foreigner, now the consequence for the contravention of the provisions of this Bill will be civil in nature and not criminal in nature. This was the main complaint of the trade, business and industry. As I said, there have been a number of cases under FERA, where it was felt, probably, that they should not be harassed. There is another aspect so far as the Foreign Exchange Management Bill is concerned. Mr. Salve has made two suggestions. It is for the Finance Minister to look into those two suggestions that have been made by Mr. Salve. One is about the distinction between the resident Indian and the citizen and the implications thereof. He is a legal expert in this area, particularly of taxation law. His interpretation may be correct and it is for the Finance Minister to take that viewpoint into account. I wonder, very much, whether the second suggestion that was made ought to be considered or ought to be agreed to - though I quite agree with him - because once*we are softening the rigours of law; probably, it may be worthwhile to do it as to why we are not aggressive about it. I think the two Bills , the Foreign Exchange Regulation Act and the Money Laundering Bill - are inexplicably linked. This particular aspect cannot be ignored. This I do not want to accept. I would like to point out that money laundering is a very secretive process. How the legitimacy is given will be considered by the Select Committee, which has been agreed to by the House. I think, this two-year period... ,

SHRI N.K.P. SALVE: Madam, unfortunately, the Money Laundering Bill is not discussed. Otherwise, 1 would have convinced the hon. Member,

Shri T.N. Chaturvedi, why the Money Laundering Bill needs to go to a Select Committee because a very crucial and centrally decisive recommendations of the Standing Committee have not been accepted. But, so far as the FEMA is concerned and the sunset provision is concerned, I have also submitted that two-year period is a little too long. I would want him to react. I will be grateful, Madam, if he reacts. The two-year duration is too long; maximum it may be kept as six months.

SHRI T.N. CHATURVEDI: Madam, so far as I am concerned, I would not differ with my distinguished colleague with regard to the reduction of period to six months. Two-year period does give an opportunity to a person to repent or compensate or decide whether he or she has done a right thing. As a taxation expert, I would also not differ with him, as a matter of policy, with this particular recommendation. Had there been a discussion on the Money Laundering Bill, I have no doubt, he would have convinced me. But, there"are certain glaring facts. The background of it is something which actually is creating or casting a shadow on the political and the economic system of our country, particularly during the last few years. Let us not forget that people may feel that I am not honest to myself if I do not express this opinion. While we have agreed to soften the FERA not necessarily because of the rational reasons and after proper thinking, but the other aspect of it is, requisite stringent action will be taken under Money Laundering Bill. I can go on giving examples because I also wanted to give the panorama as to why this Bill was necessary. Though I am not for the draconian measures or something. I am for effective measures.

For example, yesterday I saw it in a newspaper and this morning also I saw it in a newspaper. I would not like to take anybody's name. But a reference has been made, "Involved in full-time money laundering along with some political bigwigs." This again refers to our country and our system. We talk of transparency. People should know what is happening. That is why I was feeling if the two bills were taken together it will be an expression of the democratic conscience of this House and it will also convince the people that we mean business. We want to redeem the political and economic system. Because you are such a distinguished taxation expert, 1 will refer to your suggestion. 1 tend to agree with what you have said, so far as the two amendments are concerned. It is now for the Government to consider it. i

4.00 P.M.

I -would like to make a point in this regard about effective action. I would certainly like to request the Finance Minister, so far as the rules and regulations, which this Bill envisages, are concerned. Even so far as the proposed FEMA is concerned, there was no criticisrn of FEMA here for the last one-and-a-half years. But so far as the proposed

Money-Laundering Bill is concerned, there was a barrage of articles, criticism and so on. After the Standing Committee on Finance had taken those objections into account, they had agreed to some of them. But somehow or the other, the Government did not deem it proper to agree at one point of time and, probably, that is why some rethinking was called for.

But so far as even FERA is concerned, what are we going to do? The rules and regulations should be in place in time and the machinery that we are now envisaging the staffing pattern, the administrative support, etc. should also be in place in time and there should not any be gap between their appointments and their actual working and it should not happen that the kind of support as is called for is not there.

There are a certain misgivings. Misgivings have also been raised that though the entire approach and the trend of the FEMA Bill is in conformity with liberalisation outlook and reformist outlook, that somehow or the other, the cooperation of the Reserve Bank is also called for because they have also been given the delegated powers. The Reserve Bank should function in such a way and the rules and regulations should be so framed that it does not in any way curtail or restrict the reform process. This is the kind of thing and this requires some monitoring, so far as the Finance Ministry is concerned. I am sure the hon. Finance Minister will keep a vigilant eye on this.

But there is one thing that 1 would like to say and that is, staff training is another thing that is necessary. Suggestions have been made by various committees and even by various international organizations in this regard. In case we want to make it a success, training at various levels is called for. Lastly—and here I think, Mr. Salve will be with me that there was no need to refer either to the Money-Laundering Bill or FEMA. But here I find that in legislation whenever there is mention of the authorities concerned the Chairman and the Members, etc:, we hear that these are always restricted to

either the Indian Legal service, or the Indian Customs and Excise service. Here, of course, in this Bill they have said, the person may even be qualified to be a High Court judge and so on. But I think one particular service is completely ignored, and that is, the Indian Audit and Accounts Service. What seems always strange to me is that, in India, the Audit and Accounts Service, over the years, has carved out a name for itself, so far as the direct and indirect taxes and their audit is concerned, but still it is ignored. The people come from all over the world for training. Even China invited experts from this particular office to give lectures and training. They do the audit and everything. But this particular service, somehow or other, is always ignored. Not only today; this thing has been done earlier also. I do not belong to the audit and accounts service, but I was associated with its working, and that is how I am aware of its working. I was also at the National Academy of Public Administration. There also I said the same thing when the young officers joined the various services. When the Public Debt Report was produced by that particular Department, everybody appreciated that. This was the first time when the nation's attention was focussed to that particular problem of debt some 10-11 years back. They do the audit, they do it according to the recent trends in the audit world in which they are and that is why I think this is a very restrictive kind of an approach that has been adopted over the years. I am saying this as one who has not only been associated with this-Department, but who has been watching the personnel policy as well. I find this is one particular Department about which no Government has bothered. I took up this matter once upon a time. Since Independence and the promulgation of the Constitution, no Government has taken any care of this Department. This particular Department is supposed to be a tool of accountability in the same way as Madam, Deputy Chairperson, you are here in Parliament to control the officialdom, and also the working of the administration, to enable the Parliament and the Executive to effect better performance and improve the working of the Government. Madam, every other Department has a representative in the Union Public Service Commission. This is so for 50 years. And while so much had been said about this particular Department by Dr. Ambedkar in the Constituent Assembry debates with which Mr. Salve is so very familiar? But since then, not even a single member of the Indian Audit and Accounts Service has ever been appointed as a Member of the Union Public Service Commission, whereas the representation from all the other services, like the Indian

Foreign Service, the Indian Police Service, the Customs and Excise, has been there. I have been associated with all these services. I do not know whether this has been done consciously or it is an omission. I would not say, there is an allergy, but it is a kind of trend or bias attitude which has been continued in various ways. During Dr. Manmohan Singh's time also, when some Arbitration Tribunal or something had came up, I had just casually mentioned this particular point. I strongly feel about h, although this may not be an occasion to mention it, but I think since the Finance Minister is present here, I just wanted to mention this. Except in the case of the Central Administrative Tribunal, and maybe, in B.I.F.R. — that too is where they happened to be working in any Ministry - 1 have never seen any person from this service being appointed, though it was promised to me that one of the officers from this service would be appointed to U.P.S.C. Madam Chairperson, I would conclude by saying that two officers or three officers of that Department next to the Comptroller and Auditor-General enjoy the rank of the Sercretary to the Government of India, but even they do not come within the pale of consideration. Though it is not specifically the responsibility of the Finance Minister, since he knows the administrative problems and he is in charge of the Ministry of Finance, which has the largest number of Tribunals and other organisations , I think a fair deal should be given to a service which enables this Parliament to exercise its own powers. We refer cases to the Comptroller and Auditor General to produce reports. But we must take care of those who do so. It is a question of morale and motivation. This is a point, on which, I thought, Mr. Salve will also support me.

With these observations, Madam Deputy Chairperson, I support the Bill and request the entire House to join me in passing this Bill.

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SHRI N. K. P. SALVE: I do support him, and I suggest that unless a retired official of the Audit and Accounts Service becomes Finance Minister, it will not make a difference.

THE DEPUTY CHAIRMAN: I think that everyone is scared of auditors because they go into the details of everybody's accounts. So, perhaps, they want to keep them out of it.

SHRI S. RAMACHANDRAN PILLAI (Kerala): Madam, I rise to oppose the Foreign Exchange Management Bill, 1999.

Already we have referred the Prevention of the Money-Laundering Bill to the Select Committee. Our main objection to that Bill is that, that particular Bill provides for interference by the executive at every level. We are afraid that that, piece of legislation would be an instrument in the hands of the executive to please its friends and to harass its opponents. The infirmities we found in the Prevention of Money-Laundering Bill, we see in this Bill in the most magnified form.

Madam, according to some provisions of this Bill, the entire exercise we do here, the entire legislative processes we go into here are meaningless. I would like to draw the attention of this august House to clause 40 of this Bill. Clause 40 of this Bill empowers the Government to suspend the operation of this Bill for an indefinite period or for a specific period. Without any conditions and without any guidelines, the executive can suspend the operation of this Bill permanently. So, what is the use of this exercise? I would like to read that particular portion:

"If the Central Government is satisfied that circumstances have arisen rendering it necessary that any permission granted or restriction imposed by this Act should cease to be granted or imposed, or if it considers necessary or expedient so to do in public interest, the Central Government may, by notification, suspend or relax to such extent either indefinitely or for such period as may be notified, the operation of all or any of the provisions of this Act."

Public interest is a very vague term. So, this particular provision is giving unlimited powers to the executive. Any legislation that provides unlimited powers to the executive is always a bad law, is always a dangerous law, because making use of these provisions, the Government can actually please its friends and also harass its opponents. With regard to their opponents, they can make use of the provisions. With regard to their friends, they can suspend the operation of the law. This is a dangerous provision. Of course, in the changing situation, we do realise that many changes are required in our laws We are for changes. But what are we going to attain by this sort of change? We are giving unlimited powers to the executive. We are giving all these powers to the Government.

I am referring to sub- clause 3.

Of course, those things should be presented before Parliament. But, what dogs it say? It says the notification should be placed before...."If both

the Houses agree in making any modification in the Notification or if both the Houses agree that the Notification should not be issued, the Notification shall, thereafter, have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under the Notification." It protects, what has been done during the interim period. The Executive is taking a decision. The Executive is coming to the Parliament only after five months, six months, one year. Whatever is done is protected under the provisions of the Act. This is a self-defeating provision. This is taking away what all you decide in the other provision of the Bill. So, my first submission is that this is a bad and dangerous law and will have very serious and adverse effects on the entire society.

My second submission is this. I do accept that we need some changes in the present law, because changes are taking place in our country and in the international situation. But, what are the changes that you intend to make in this Bill? Of course, as per the provisions of the P.E.R.A., it was a quasi-criminal offence. Now, all the foreign exchange violations are being treated as "civil matters. But, here the Government has not made any distinction between the foreign exchange coming into our country and the foreign exchange going out of the country. The Government is treating these two things in the same footing. The foreign exchange that is going out of the country has a very serious effect in our developmental efforts and in safeguarding our national security. So, my submission is that this Bill is not looking into these aspects. Because the foreign exchange that is going out of the country is dangerous to our national security, it should be treated differently from the foreign exchange that is coming into the country. No such distinction has been made.

My third submission is this. As in the case of the prevention of money laundering Bill, this Bill also provides facilities for the Executive to interfere at every level and at every stage.

There are two authorities in this Bill. One is the adjudicating authority created or appointed as per clause 16 of the Bill. This adjudicating authority is empowered to adjudicate the violations on foreign exchange. They can impose fine. If the offender fails to pay the money, he can be sent to prison. This is one adjudicating authority. : Clause 36 of the Bill provides for the establishment of a Directorate of Enforcement with a Director and such

other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act. Both these authorities, the adjucating authority and the authorities appointed as per clause 36 of this Bill, in a way do not have powers. Of course, they are given quasi-judicial powers through this Bill. But at every stage, the executive is interfering . They do not have any specific duration of period. They do not have any protection. They do not have any autonomy. They do not have any independence. Not only this; they have to act as per the directions and instructions of the Government. So, what is there? They have quasi-judicial power. They are tools in the hands of the Executive. Madam, clause 36, sub-clause (3) says, "Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act." Of course, clause 37, sub-clause (1), empowers the Government to appoint a Director of Enforcement and other officers of Enforcement. But for a particular offence, the Government can appoint an entirely separate authority than the authority appointed as per clause 37 (1) of this Bill. I would like to draw the attention of this House to clause 37 (2), 'The Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13." So, the Government has taken powers to investigate a particular case and to appoint a particular officer to go into that particular case. What is the need for such a provision? If the Executive wants to protect a particular person or wants to punish a particular person, a particular officer is appointed. This is a very, very dangerous and bad law. Not only this; the Government is not satisfied over this.

SHRI N.K.P. SALVE : Will you yield for a minute? Madam, I share the apprehension that has been expressed by the hon. Member. ... *(Interruptions)...*

THE DEPUTY CHAIRMAN : I enquired as to what happened to the mike system. I have been told that there are too many rats in the Rajya Sabha which are eating the wires and causing this problem.

SHRI N.K.P. SALVE : I hope they are not working on party lines.

THE DEPUTY CHAIRMAN : But the rats are busy during the day. It is a fact. These rats are eating the wires. So, the disturbance is because of that. We have to get some cats.

SHRI N.K.P. SALVE : Madam, I entirely agree with the apprehension expressed by the hon. Member, Mr. Ramachandran Pillai. It is a very important aspect of the matter, that you are going to hand over the administration of this kind of a very sensitive enforcement into the hands of the bureaucracy controlled by the Government. An alternative could be that you put these authorities directly under the jurisdiction of the High Court. 1 request the hon. Member to suggest some alternative so that they do not remain under the authority of the Government. As such, it is not the Executive, but really a quasi-judicial authority which has been given the power.

SHRI S. RAMACHANDRAN PILLAI : Then, let us all agree to refer this Bill to a Select Committee of the Rajya Sabha. Then, we can think over this aspect. You agree to it. Madam, not only this, the Government is satisfied not only with all these provisions, but with other provisions also. Madam, I would like to refer to clause 38(1). I am not going to read out the whole thing. It says: "The Central Government may, by order and subject to conditions and limitations as it deems fit to impose, authorise any officer of Customs or any Central Excise Officer or any police officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement under this Act, as may be stated." Again, the Government is taking upon itself the power to appoint officers of their choice because they are not satisfied with the provisions of clause 36, clause 37 and also clause 38. What is the cumulative effect of all these provisions? These officers are nothing but puppets in the hands of the Executive. Of course, the Government may come and the Government may go. But the Legislature should ensure that this authority is not misused to please a friend or to harass an enemy. So, this is a very, very dangerous provision. Not only this; let us look at the provision relating to the powers of the Reserve Bank of India. Many references are there with regard to the Bank of India asking the Reserve Bank of India to prescribe certain rules and regulations, etc.etc. Clause 3 speaks about regulations made by the Reserve Bank of India. Clause 5 says that the Government of India should consult the Reserve Bank of India, and

clause 6 deals with the capital account, that is, opening the capital account to globalisation. There, the Reserve Bank of India may, in consultation with the Central Government, specify these things. There is another provision. Clause 9 deals with clauses 4 and 8. Clause 4 is about holding foreign exchange and clause 8 is about realisation and repatriation of foreign exchange from foreign countries, and the Central Government is asked to prescribe conditions for h, that is, a,b,c,d and e. What is sub-clause (f)? " Such other receipts in foreign exchange as the Reserve Bank may specify." What does this mean? The Reserve Bank of India has been given unlimited powers to exempt anything under the sun. Not only this, Madam, look at clause 41.1 would like to draw the attention of the whole House to clause 41. Whatever is given to the Reserve Bank of India with one hand is being taken away by the Government with the other hand. Look at clause 41. It says:" For this purpose of this Act, the Central Government may, from time to time, give to the Reserve Bank of India such general or special directions as it deems fit, and the Reserve Bank shall, in the discharge of its functions under this Act, comply with any such directions." What is the need for consulting the Reserve Bank of India? Let the Government be transparent; let the Government come forward and say this. Only the will of the Government can tackle this situation. Make a single sentence legislation. What is the need for having all this camouflage. All the directions which have been referred to in other clauses are meaningless before clause 41.

Madam, not only this; you also look at the compounding power of the Director. Clause 15 deals with the compounding power. This is exercised either by an officer of the Directorate of Enforcement or by an officer appointed by the Government. Clause 15 says:

"Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed."

They are given unlimited powers. What is the need for making such provisions under clauses 13 and 14? Clause 13 provides powers to the Adjudicating Authority to impose a fine. As regards clause 13, my learned friend, Shri Santosh Bagrodia, has moved an amendment,because the fine

imposed is thrice the money involved in the contravention. He has moved an amendment to make it 20 per cent. No guidelines are there, no conditions are there. The compounding officer can just ignore the whole thing and set the violators, the offenders, free, without adding even a single pie to the money involved in it. This is the power given to the compounding officer! What is the meaning of this Bill? What purpose is it going to serve?

Madam, as per clause 6 of the Bill, the entire capital account transactions are opened. We know the experience of the South-Cast Asian countries. It is a very, very dangerous thing. I am not going into the details. The adjudicatory mechanism and the structure of the appeal are totally unsatisfactory. Their qualifications are not fixed, their pay is not fixed, and the Government can also interfere at every level, at every stage.

Madam, my learned friend, Salveji, has referred to another provision made in sub-clause (3) of clause 49. 1 have an objection to this particular clause. My objection is entirely different from the objection raised by my friend, Salveji. Because of this provision, the present Bill is seeking to give a retrospective effect. The fundamental position is, if anything is done on the basis of a law that is in operation, definitely that will not be considered as a violation. But this particular sub-clause (3) seeks to give a retrospective effect to an act committed before this particular Act came into operation. So, it is giving a retrospective effect. That also is wrong. If FERA considered an offence committed at the time when FERA was in operation, that process should be allowed to be completed under that law. But the process is incomplete. But this clause 16 is with retrospective effect. So, Madam, I have already submitted that this entire exercise is futile. This Bill is seeking powers to the Government; that whatever they think, they may be allowed to do. It is a very dangerous provision. This can be made use of by the Executive. I am again repeating, ' to please its friends and to harass its enemies." Such a double-edged weapon should not be given to the Executive. The present Government may be there, or, another Government may come; that is a democratic process. But we should ensure, as a responsible legislature, that such powers are not handed over to the Executive. So, I submit that all these aspects should be taken into account. And this Bill may be referred to a Select Committee. The Select Committee can complete its exercise as quickly as possible. There is need not be any apprehension. We can sit together and rectify the mistakes within a week or ten days, before the next Session, because we are considering a serious

piece of legislation. Let us correct the mistakes and loopholes. So, I request the august House to agree and refer this to a Select Committee. With these words, I conclude.

SHRI SANTOSH BAGRODIA (Rajasthan): Madam Chairperson, I rise not only to support, but to compliment the hon. Finance Minister for bringing forward this Bill which was overdue. My senior colleague has mentioned 4-5 years. In my opinion, when our Leader, Shri Rajiv Gandhi, initiated various technological missions, at that time, this Bill cculd have been introduced. It should have come in 1989-90.

श्री संघ प्रिय गौतम (उत्तर प्रदेश) : गलती तो आपने की थी ।

श्री संतोष बागड़ोदिया : अच्छा, आपने ठीक कर दी । It is because of these technological missions of Rajivji - I am now going into the history of the economic development of the country - that today we have developed. For example, telephones. Every village in the country is covered. In the 80's, I could never imagine of talking to any villager in Rajasthan, or, in Kerala or in any other remote area. Now, acceleration of these technological missions could have taken place much earlier if this kind of legislation had come earlier. Why it could not come, and who made the mistake, is a matter of history. I am only trying to say that it should have come earlier. Probably, the wisdom at that time was to wait for a little. But it couid have come even in 1990, or, 1991. But the Government, which was supported by my Leftist friends, not only tried to stop the development of the country, but they even tried to reverse the development process. The result was the country went ten years behind. And it is for this reason that when the Congress Government came back to power in 1991, this process was restarted because the Government mortgaged the gold of the country with the foreigners. The Congress Government had to take, at least, one or two years, not only to bring back the gold but to earn foreign exchange for the country and that process was started from 1993. That is why it was so much overdue. Our Finance Minister has finally brought it. Those who try to send it to a Select Committee are not going to be successful because the entire country is waiting for more development which is being disturbed by the draconion provisions of FERA.

Madam, we are talking about liberalisation and globalisation. I now quote a statement made by our hon. Prime Minister only a few days ago, that is, on 5th December.

'The world today fully recognises the potential as well as the performance of Indians in software development. Many of their success stories have been written abroad. Our Government is determined to create the necessary conditions"—

I would like to underline the words "necessary conditions"-

"that will enable bright and enterprising young Indians"--

1 would also like to underline the words "bright and enterprising young Indians"--

"to recreate the magic of Silicon Valley while working in India."

This is what our hon. Prime Minister stated while delivering the Inaugural Address at the India Economic Summit organised by the World Economic Forum and the CH.

Madam, if the country wants these bright Indians to really help the country, let them not go to the Silicon Valley, let us create a situation which will make them to stay in our country and make our country rich. We are not going to share the poverty. Let us try to share the riches of the country. Let these Indians, who are in the Silicon Valley, come back to the country. They will create wealth for every citizen of the country. There is a saying in Hindi in Rajasthan—I don't know whether it is in Marwari language— लड्डू फूटेगा तो भोरा तो हाथ आएगा ही । इसका मतलब है :- अगर लड्डू टूटेगा तो आपके हाथ में एक दाना तो आएगा । मगर लड्डू ही नही होगा तो आपके हाथ में दाना कहां से आएगा । यह जो लड्डू है इसको क्रिएट करेंगे हमारे इंटलैक्चुवल क्लास के लोग जो सिलीकॉन वैली में बैठे हैं, उनको बुलाइये या यहां पर जो लोग उस लाइन में एजुकेटिड हो गए हैं, उनको बुलाइये । उस लाइन में वह लोग चाहे इनफारमेशन टेक्नालॉजी में हो, चाहे किसी दूसरी टेक्नालॉजी में हो । It is necessary for the country. How are we going to develop this, unless we create a better situation than what is available in the USA? I am not talking about similar, I am not talking about less, I am talking about a better situation than what is available there. They have to be attracted. They should get something more than what they are getting anywhere in the world. Today, the world has become a small village. Nobody is going to wait for us. They can go anywhere, any part of the world, and progress. If you want them to come back to India, for the sake of the country, you have to create a situation which will attract them, and they will come only if we

pass these kinds of laws or better laws than this. What is the purpose of this particular Bill, which we call the Foreign Exchange Management Bill? It is written here in the Statement of Objects and Reasons. I am only quoting the last line.

"The provisions of the Bill aim at consolidating and amending the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange markets in India."

I fully agree that, at one time, we needed the Foreign Exchange Regulation Act. I don't say that it was wrong to have the regulation Act in those years because we didn't have enough foreign exchange. Now we don't need the regulation. We have plenty of foreign exchange. We have 36 billion dollars, it could be 200 or 500 billion dollars; it is possible. But it is possible only when we make these laws acceptable to the people who can create this kind of an atmosphere. If you restrict these laws, then we will go back to the stage of 1989-90, when we had to mortgage our gold, or, we will have no foreign exchange. It is for this reason, Madam, that these purposes are very well mentioned. There are no shortages. This law, in my opinion, is definitely a first step towards capital account convertibility. I know the apprehension of my Leftist friends, of which they are concerned. Their role model is probably some small, small country in South-East Asia. That is not my roll model. My role model is India. My role model is Indian economy. My role model is Indian parliamentarians. I have full faith in every citizen of my country. I have full faith in economic policy of the present Government; and I also have full faith in our present Finance Minister. There is no need to doubt his intention, or, integrity. His intention, to the best of his wisdom, is to develop the country's economy. I fully support him. He should now take the next step towards capital account convertibility. Madam, clause 6 of the Act says about RBI's approval. I am sure the time will come when even this approval will not be required. That is why some more powers have been taken by the Government. Then we will not be required to come to Parliament everytime. After all, they are also here to act upon it. We will fight with them, if they make any mistake. The parliamentarians will question them. Let them have powers. Don't tie them with all kinds of strings, because, this way, they will not be able to function. Let them function. If they function, let them make mistakes, so that we can challenge them. If we tie them, then we w,ill have to take the responsibility,

the Parliament will have to take the responsibility; for everything. They will have nothing to do. We will have nothing to do with them. Let them act. Sub-clause 2 of clause 6 says "more freedom in taking back interest and dividends on investment without any restrictions". Obviously, when somebody has invested millions or billions of dollars in our country, we should not restrict them. If they come here, then you will have to give them the minimum interest and the dividend which has to be allowed to be taken back. Because they have constructed roads; they will construct hospitals, they will construct all the requirements of the country. They should be allowed to take back the minimum interest, the minimum dividend. What is wrong in this clause? At this stage, I would like to warn the Government that whatever foreign exchange reserves have come, they are not because of trade. Our trade deficit is still a point of concern. Our trade deficit has been increasing continuously since 1992-93. It was 12.5 billion in 1996-97, which was 3.5% of the GDP. In 1996, it was 1.6% of the GDP. In 1991-92, we had a surplus trade balance of 1.6 billion, i.e. 0.7% of the GDP. Immediately after the Congress Government came to power, we had a surplus trade balance. In 1996-97, the hon. Finance Minister could talk about some surplus on invisible account, net private transfer. That was about 11.5 billion, i.e. 3.4% of the GDP. Madam, I would like to suggest to the hon. Finance Minister that he should take steps so that we may not have any trade deficit. Because, whatever foreign exchange is coming from the FDI, that is going to go back in due course. And some day, they would like to take away all the foreign exchange. That is not the real balance, the real balance will come only when we have surplus trade balance. The current account deficit can increase from 1.1 per cent of the GDP to 3 to 4 per cent of the GDP. Some drastic steps need to be taken to avoid this situation. There is one apprehension expressed by the Members sitting in the centre, but who basically are Leftists. This Bill has been thoroughly discussed by the whole country. This Bill was introduced and then it lapsed. This Bill was again introduced. I don't think they still want to change their hearts or their views. Their apprehension is it will create black-marketeers. I can't understand it. I would like them to please understand what black-marketing is. It is easy to say that this man is a black-marketeer or that man is a black-marketeer. But what is a black market? If there is a control, there is a black market. If there is no control, there is no black market. If you want to put control, there will be a black market. Today what is happening with

foreign exchange? They talk about Hawala transactions. What I understand from the newspaper reports is, the rate of foreign exchange in banks and outside is the same.

SHRI RAMACHANDRAN PILLAI: Do you mean to say that if we do away with the IPC, there will be no offences in India?

SHRI SANTOSH BAGRODIA: Madam, my friend has the liberty of putting his own words in his own mouth because he cannot put his words in my mouth. I leave it to his judgment to understand what I am trying to say. When I say this, I don't mean that there should be no law. FEMA is also a law. It also does not mean that we should have a law that if I talk, you will kill me, I am not going into IPC because we are talking about FEMA. That will be a long discussion. I can discuss it with the hon. Member separately if he wants. Madam, I would like to quote some figures for the information of the House. If there is more control, there are more crimes and if there is more liberalization, there are lesser number of crimes. How is it? I am talking about economic crimes. 1 am not talking about other crimes. In the year 1994, 6,061 cases were registered. I don't have figures beyond the year 1994. in 1995, 5,633 cases of FERA were registered out of which show cause notices were issued in the case of 2,456 which is less than 50 per cent. The number of prosecutions launched was 202 only. Out of the 5,633 cases which were registered by the FERA authorities, prosecution started in 202 cases. I do not know what the result is. The Finance Minister might give this information. In 1996, 5,486 cases were registered.

THE DEPUTY CHAIRMAN: Mr. Bagrodia, please conclude.

SHRI SANTOSH BAGRODIA: Madam, how much time are you giving me? I will adjust my speech according to the time given by you.

THE DEPUTY CHAIRMAN: I have to go according to the time given to your party.

SHRI SANTOSH BAGRODIA: Madam, I am not insisting or fighting. Should I speak for two minutes or five minutes or ten minutes? Kindly tell me so that I can adjust my speech.

THE DEPUTY CHAIRMAN; How much time would you like to take?

SHRI SANTOSH BAGRODIA: I would like to speak for half-an-hour. But you would not give me half-an-hour. Should I speak for five minutes?

THE DEPUTY CHAIRMAN: Okay, you can speak for five minutes.

SHRI SANTOSH BAGRODIA: 1 will quickly give these figures. In 1996, 5,486 cases were registered. Show cause notices were issued in the case of 2,291. The number of prosecutions launched was 101, and 223 arrests were made. In 1997, 5,577 cases were registered and show cause notices were issued in the case of 2,721. The prosecution was launched in only 18 cases. And, 159 arrests were made against 18 cases launched. In 1988, up to 31st March, 1988, 880 cases were registered; 636 notices were issued; prosecution was launched in 17 cases only, and 77 arrests were made. So, this is what I wanted to mention for the information of my Leftist friends, that this FERA was really not helpful; rather it was helping those very persons who were guilty. Many business people had decided, during this period, not to do any international trade because of the lacunae in the FERA. As regards the Sunset Clause, which my senior colleague has already mentioned, I fully agree with him that it should stop immediately. If he has mentioned 'three months', let it be three months. But 'two-years' is a long period. Otherwise, the entire Department will only look for these two years, and see how to have more cases registered? That is the only job which they will be doing. As regards the clause, "Liberalisation of (i) Indian investments abroad, — it is a good idea in this particular Bill ; (ii) increased access to external borrowings by Indian corporators; and (iii) participation of foreign insitutional investors in the stock markets." Madam, FEMA will, definitely, promote external trade and bring about an orderly evolution of foreign exchange markets.

One more point which I want to make, which my friends have already mentioned, is about the appointment of an adjudicating authority. But no qualification has been mentioned. 1 will appreciate if some qualifications are mentioned; namely, what kind of officers will be appointed for this. The appointment of an adjudicating authority, without qualifications, nullifies the confidence which was building up in the minds of the exporters and other international traders. And the last important point is accountability. There is an accountability for every citizen of the country. There is an accountability

with businessmen, with traders, with industrialists, and with parliamentarians. But is there any accountability with the officers? Let there be some accountability with the officers, with the bureaucracy of the country, whichever be the part of the country or whichever be the department. I am not talking of this department alone. I will appreciate if the hon. Finance Minister can find some way out by which there is some accountability. The officers start judging the law, reading the law, to then-own convenience, and after that, the judges interpret it in an entirely different way. Where will the citizens go in this kind of a situation? Let there be some accountability for the bureaucracy also.

With these words, I really thank you very much for giving me these extra two, three or four minutes beyond my party's time. And, I support this Bill whole-heartedly. Thank you

THE DEPUTY CHAIRMAN: I thought, as a businessman, your calculations will be correct. I said, 'five minutes' (2+3) It can't be four minutes. Now, Shri Jalaludin Ansari.

श्री जलालुदीन अंसारी (**बिहार**) : उपसभापति महोदया, मैं दो तीन बातों की ओर ध्यान आकर्षित करना चाहता हूं। हमारे बहुत सारे विद्वान साथियों ने अपनी बातें रखी है। जिस मकसद से फेमा बिल को लाया जा रहा है, उसमें यह है कि कोई इल्लीगल मनी, गैर कानूनी तरीके से जो पैसे आते हैं या देश से बाहर जाते हों उस पर रोक लगाई जाए लेकिन इसको रोकने का कोई प्रोविज़न या व्यवस्था इस बिल में नहीं हैं। दूसरी बात मैं कहना चाहता हूं कि जो टेक्स का इवेज़न करते हैं या टेक्स बचाते हैं, उनके लिए भी कोई ऐसा प्रोविज़न इस बिल में नहीं है। तो चाहे इल्लीगल मनी को इस देश में लाना है या इस देश से बाहर भेजना है, यह टैक्स को बचाता है। यह तो क्रिमिनल एक्ट है और इस क्रिमिनल एक्ट को आप क्रिमिनल प्रासीक्यूशन में शामिल न करके इसको सिविल प्रासीक्यूशन में शामिल करते है। अभी हमारे एक विद्वान मित्र बोल रहे थे तो हमको ऐसा लगा कि आई. पी. सी. और सी. आर. पी. सी. को इस देश से खत्म कर देना चाहिए। इसकी कोई जरूरत ही नहीं है। हमारे सिब्बल साहब यहां बैठे हुए हैं ...(**व्यवधान**)... जब क्रिमिनल एक्ट है तो क्रिमिनल प्रासीक्यूशन होना चाहिए जिसका इस एक्ट में कहीं प्रोविजन नहीं है।

दूसरी बात मैं कहना चाहता हूं कि सरकार ने ही एक स्टडी टीम बनायी थी इस फेमा के लिए। वह तो सरकार की टीम थी। तो इस स्टडी टीम की क्या रिपोर्ट इस फेमा के बारे में है वह माननीय मंत्री जी ने नहीं बतायी। हम जानना चाहेंगे कि उस टीम की क्या रिपोर्ट है ? वह भी तो इस सदन को बताएं।

5.00 P. M.

तीसरी बात, मैं जानना चाहता हूं कि प्रत्येक वर्ष इस देश से कितना पैसा बाहर जाता है ? कितना बाहर है और कितना हर साल जाएगा । तो इस कानून के जरिए उसको रोकने का आपका क्या प्रोविजन इसमें है ? मेरी समझ में इसमें कोई प्रोविजन नहीं है कि इसको आप रोक सकें ।

अंतिम बात मैं कहना चाहता हूं कि इसमें जो आपने प्रोविजन किया है उसमे आपने रिट्रोस्पेक्टिव इफेक्ट की बात की है । यह बात कुछ समझ में नही आती है । रिट्रोस्पेक्टिव इफेक्ट का क्या अर्थ हुआ ? यह व्यवस्था आप क्यों कर रहे हैं ? इस देश में अभी भी काला धन है और इस ब्लैक मनी को यहां भी लोग रखे हुए हैं, विदेशों में भी रखे हुए हैं । तो इस तरह से जो यह इल्लीगल मनी, टैक्स इवेजन से जो ब्लैक मनी पैदा होगी – जो कभी भी है, बाहर लोग रखे हुए है, इस देश में भी रखे हुए है उसको इस देश में रोकने के लिए और बाहर भी जो रखे हुए हैं उसको रोकने के लिए इस बिल में क्या प्रावजिन है ? मैं इन्हीं बातों को जानना चाहूंगा माननीय मंत्री जी से और मैं समझता हूं कि आज जो स्थिति हैं – लिबरलाइज़ेशन और ग्लोबलाइजेशन का युग है जिसमें सरकार चल रही है, इसमें तो इसकी गुंजाइश और बढ़ जाती है । लेकिन कोई स्ट्रिक्ट प्राविजन आपके इस बिल में नहीं है । मनी लान्डरिंग बिल और इसमें तो बहुत सारे मामलों में सिमिलैरिटी है । उसको तो आपने रेंफर कर दिया सिलेक्ट कमेटी को । इसको आज ही पास करा लेना क्यों चाहते हैं ? इस पर भी विचार करके और इसके प्राविजन ठीक करके अगले सत्र मेंलाया जाए । सिलेक्ट कमेटी की रिपोर्ट भी आ जाएगी फर्स्ट डे, यह मेरा सुझाव है । मैडम, आपके माध्यम से और इस सदन के माध्यम से । इतने दिनों में कोई बहुत कुछ बिगड़ने वाला नहीं है । तो इस बिल को भी सिलेक्ट कमेटी को रेफर कर दिया जाए ताकि इसमें भी पक्के प्राविजन हो जाएं ताकि जो एप्रीहेंशंस हैं, जो खतरे हैं उनसे बचा जा सके और सही तरीके से जिन चीजों को आप रोकना चाहते हैं, उनको रोका जाए । उससे देश को भी फायदा होगा और जो गड़बड़ियां होती हैं उनसे भी बचा जा सकता है । यह मेरा सुझाव है और अगर इस बिल को आज आप पास करना चाहते हैं तो मैं इस बिल का विरोध करता हूं ।

SHRI S. VIDUTHALAI VIRUMBI (TamO Nadu) : Madam, it is 5 o' clock. Today, we dispensed with the lunch recess also.

THE DEPUTY CHAIRMAN : We will finish it very soon.

प्रो0 राम गोपाल यादव (उत्तर प्रदेश) : मैडम मैं अभी अपने कुछ साथियों को सुन रहा था और मैं यह महसूस कर रहा हूं कि पिछले कुछ वर्षो से जैसे जैसे किसी भी क्षेत्र में

डिटोरिएशन होता है, सरकारी मशीनरी, ला एन्फोर्सिंग मशीनरी अपनी अक्षमताको छिपाने के लिए कानून को कमजोर समझा कर नए किस्म के कानून लाने की कोशिश करती है । अभी हमारे कांग्रेसी मित्र जो कह रहे थे, ऐसा नहीं है कि फेरा में कोई कमजोर कानून था बल्कि लाला लाजपत राय : एन्फोर्सिंग मशीनरी उसको सही तरीके से इम्पलीमेंट नहीं करा पा रही है । हम सभी को याद है कि संविधान के बनते समय जब बहस चल रही थी कंस्टीट्यूएंट असेम्बली में, तो बाबा साहब अम्बेडकर ने कहा था कि अगर कभी यह संविधान फेल होता है तो हम यह समझेंगे कि संविधान में कोई कमी नहीं थी कि बल्कि वह व्यक्ति जो इस संविधान को लागू कर रहे थे वह कमजोर थे, उनमें कमियां थीं । इसलिए यह टेण्डेन्सी बनती जा रही है कि किसी तरीके से फंडामेंटल राइटस को एन्क्रोच करके तमाम इस तरह के कानून बना दिए जाएं और बहुत आसानी से लागों को उसमें लाया जाए, लेकिन इसके बाद भी क्या गारंटी हैं कि लोग दंडित होंगे ? क्य गारण्टी है ? आईपीसी, सीआरपीसी की तमाम धाराएं होने के बावजूद लोग हत्याएं करते हैं, धारा 302 के मुलजिमहोते हैं और फिर छूट जाते हैं । तो क्या इन धाराओ को खतम कर दें ?

एक पाइंट जो पिल्लै साहब ने उठाया रेट्रोस्पेक्टिव एफेक्अ वाला, मैडम, यह रूल आफ ला के मान्य सिद्धांतों के विरुद्ध है । रूल आफ ला यह कहता हैं कि किसी भी व्यक्ति को तब दंडित किया जा सकता है, जब उसने किसी प्रचलित कानून का उल्लंघन किया हो । अगर यह कानून प्रचलन में आ जाएगा । तो इसके आने के बाद होने वाले अपराध के लिए दंडित किया जाना चाहिए, लेकिन आज प्रचलन में आएगा और 6 साल पहले के किसी एक्शन के लिए किसी व्यक्ति को दंडित किया जाएगा तो यह रूल आफ ला के अगेन्सट होगा और जबकि पार्लियामेंटरी डेमोक्रेसी की असेन्स ही रूल आफ ला है । ...(**व्यवधान**)... आप उन्हीं को लीगलाइज करना चाहते हैं । यही तो मेरी एप्रिहेन्शन है कि यह इसलिए रेट्रोस्पेक्टिव एफेक्ट है ताकि हवाला जैसे तमाम केसों की लीगलाइज किया जाए और लोगों को बिल्कुल छोड़ दिया जाए । इसीलिए इस एप्रिहेन्शन के तहत जो पिल्लै साहब का था, माननीय वित्त मंत्री जी से चाहूंगा कि कृपा करके जिस तरह से मनी लाडरिंग बिल को जो सेलेक्ट कमेटी को भेजने का प्रस्ताव था उसको स्वीकार करते हुए, आपने अपने प्रस्ताव के जरिए उस बिल को सेलेक्ट कमेटी को भेजा, उसी तरह से इस विधेयक को भी आप सेलेक्ट कमेटी को भेजने की कृपा करें । धन्यवाद ।

THE DEPUTY CHAIRMAN : Now, Shri CP. Thirunavukkarasu. We have started calling you CPT. *...(Interruptions)...*

SHRI VAYALAR RAVI (Kerala) : He is Arasu. *...(Interruptions)...*

THE DEPUTY CHAIRMAN : My Secretariat does not write Arasu. So, I have to write it in Urdu to pronounce it correctly. *...(Interruptions)...*

SHRI ADHIK SHIRODKAR (Maharashtra) : Madam, once, the former Supreme Court Chief Justice Gajendragadkar had gone to Russia. They could not pronounce his name. Ultimately, they started calling him 'Gajen'.

THE DEPUTY CHAIRMAN : That was a good name.

SHRI SANGH PRIYA GAUTAM : So, now, he is CPT.

SHRI CP. THIRUNAVUKKARASU (Pondicherry) : Madam, I support the Foreign Exchange Management Bill, 1999. As far as FERA is concerned, everybody said that it is a criminal law. Now, it has been converted into FEMA, which is a civil law. My learned friend, Shri Ramachandran Pillai, spoke about clause 38 of the Bill which empowers other officers with some powers. It states, 'The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any central excise officer or any police officer or any other officer of the Central Government..." As far as clause 38 is concerned, it is a question of empowering certain officers. It is always vested with the Government. This is not only under this Bill; if you look at the Essential Commodities Act, or, if you look at the Customs Act, or, if you look at any analogous Acts, the provisions of section 38 will be there because a police officer can discharge his duties under that.

With regard to other clauses, the powers will be conferred by the Central Government on different officers because different offences are involved under FEMA. As such, empowering of different officers as per clause 38 is, according to me, perfectly valid.

Mr. Ramachandran Pillai said that qualification for the Adjudication Authority or the Special Directorate (Appeals) Authority has not been specified under the Act. With great respect, 1 would request him to read clause 46 (e) (0 and (i). Section 46 (i) says that salary, allowances and other service terms and conditions of the members can be prescribed by rules. Clause 46 (0 says, salaries and allowances of the Appellate Tribunal and the Special Director (Appeals) can be prescribed by rules. Clause 46 (i) is more important. Another matter is required to be prescribed. Under this Bill, the Government is always competent to prescribe the conditions of the person who has got appointment in the Appellate Authority or Adjudicating Authority. I submit, it is perfectly valid.

Much was said with regard to safeguarding the interests of the public. It is said that arbitrary orders will be passed by the authorities concerned. But they are forgetting the fact that, as far as this Act is concerned, there is, firstly, the Adjudicating Authority under clause 16; and, against that, there is an Appellate Authority under clause 17 of the Bill. According to it, any order passed can be questioned before the Appellate Authority; and, secondly, there is an Appellate Tribunal constituted; further, the High Court is competent to make an inquiry into this matter with regard to a question of law. So, there will not be any injustice to any party, as far as this Bill is concerned. They are having four fora available with regard to the rights conferred under this Bill. As far as this Bill is concerned, it is giving a lot of safeguards to the public.

With regard to interpretation of clause 49, I totally agree with my learned colleague, Mr. Chaturvedi, who is here. Clause 49 reads: Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act.

Taking into consideration the old economic practices, FERA is maintained for a period of two years, with regard to offences committed prior to this proposed legislation. So, the two-year time is justified.

With regard to clause 4 also, subject to the provisions of clause 3, all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act, as if the Act is not repealed.

Under the Representation of the People Act, any person who has committed offences under the Essential Commodities Act, or Protection of Civil Rights Act, or Cosmetics Act or convicted under FERA, is not entitled to contest the elections. In the case of the old Act, if a person was convicted under FERA, he was not entitled to contest the elections. I want to say further. If a person is arrested under FERA, prior to the commencement of this Act, should not be entitled to contest for elections. Th; Representation of People Act, should be amended accordingly. I wholeheartedry support this FEMA Bill. This is a good legislation.

Thank you, very much, Madam.

SHRI VAYALAR RAVI:: Madam, I submit that this whole Bill is not necessary because only clause 14 is enough to repeal the old Act. It has been said about the new Act that it would save the citizens. But, who are those citizens? The FERA Act was effective. It was there to control, regulate and check losses occurring due to *hawalas* and other kinds of foreign exchange rackets. Today this legislation comes with a presumption that every businessman is very honest. As Mark Antony said, "Brutus is an honourable man" they call them - defaulters. Simple! The whole presumption of this law is to give encouragement to more frauds because a defaulter would not be sent to jail. Even if he is sent to jail, he will be sent to a civil prison which is quite comfortable. He is given all the options of bail and he enjoys respectability. What he is required to do is to pay just Rs.2 lakh to come out. That is all. Now, you look at the quantum of punishment. You see what happens when this Act will come into force. When they were sitting in the Cpposition and in various Committees, I noticed that they were levelling various allegations against various businessmen and exporters. They were saying that many exporters were defrauding the nation and siphoning off the foreign exchange. There were many such cases. They are all evading criminal proceedings. Today what is happening is that they are calling them only defaulters. Mr. Finance Minister, inquire from the Reserve Bank about it. We took evidence in the Committee and many witnesses pointed out that there was no mechanism. Now every exporter will have to register the quantity of his exports and the money that has been transacted. It is very difficult to do so. It is very difficult for the Reserve Bank to keep an account of the exports. When we were hearing the officers of the Ministry during a meeting of the Committee, they told us that it was difficult to go into all the transactions because there were thousands of exporters. There is no cell for this purpose. I know that there are some administrative problems. Maybe, the administration is not efficient. Now you are entrusting everything to the Reserve Bank. I am referring to that clause. It is stated that every exporter must inform in time because they may keep the records of exports. Suppose some of the exporters do not inform. What will you do? The Reserve Bank may not know about all the exports and the exporters who have not informed it about their transactions. I am not blaming the Reserve Bank because there is no effective mechanism available with it to deal with thousands of exporters. The Finance Minister should have a re-look at this

clause because the Reserve Bank of India is not capable enough of dealing with ail the exporters of this country- The Finance Ministry should also find out as to how much quantum of money is due to this country from the exporters. I can read out some of the clauses if he wants. So, the point I am stressing is that there is no mechanism to deal with this subject.

SHRI GURUDAS DAS GUPTA (West Bengal): Are you a conservative because you are speaking against liberalisation?

SHRI VAYALAR RAVI: Liberalisation is a different thing. I am not dealing with that subject at the moment. *...(Interruptions)...* Mr. Gurudas Das Gupta wants to favour some of the exporters, but I don't. Madam, I am making a very serious point. I request the Minister to look into it. Now, what is the punishment for the defaulters? A defaulter comes and you say it is three times the value or Rs.2 lakhs, whichever is higher. If somebody makes a fraud of Rs. 10 lakh, then he has to pay Rs.30 lakhs. But what is the maximum punishment? The maximum punishment is only Rs.2 lakhs. If you carefully look at the Bill, you find that it has been drafted in such a style that it is only subjective. Madam, we support this Bill. My party is supporting this Bill. It is a different matter. I am only pointing out some of the lacunae which are in the Bill. It has been mentioned that the punishment will be three times higher than the amount due to the Government. But what is said here is that the maximum amount will be Rs.2 lakhs. I request that this aspect may be looked into. Now, what is the guarantee that all the exporters will declare their transactions or the foreign exchange earned through exports? I would also like the Minister to go through the laws which are prevailing in other countries in this regard. People are very fond of speaking about America. *...(Interruptions)...* Businessmen are very shrewd and they escape the provisions of this law. Moreover, you are giving them an option of Rs.2 lakh

SHRI SANGH PRIYA GAUTAM. Are you addressing the Chair?

SHRI VAYALAR RAVI: No, I am addressing you. *...(Interruptions)...* I am only pondering over this matter. I request the Finance Minister to look into what I have said. The Finance Minister can definitely come with some more amendments later on. I am only stressing the first point regarding registration of exporters because 1 do not have much time. 1 suggest that you do not bring in this provision. It is already available. The exporters are required to inform the Reserve Bank. But, the Reserve Bank is not equipped

with an effective mechanism to deal with all these cases. I also want the Finance Minister to took at the mechanism available in various other places, be it England or the entire Europe, as to how they are controlling then-foreign exchange. 1 don't mind even copying that. It is not as stringent as in Europe or in England. I know some laws here. Mr. Ramachandran Pillai and other friends have drawn the attention to contradication between clause 6 and 40. I do not want to repeat it. My point is, this Bill gives more encouragement for defrauding the nation and siphoning of foreign exchange, rather than bringing it in because Brutus is honest. They speak about a lot of things- the CH, the FICCI, etc. I know the Congress Party had initiated the reforms and you are going in for the second-generation reforms. What is the demand of the FICCI? What is the demand of the CIA? I am sorry. It is CH.

THE DEPUTY CHAIRMAN: Is it deliberate or a slip?

SHRI VAYALAR RAVI: It was a slip of the tongue. The people, who are sitting there, are all honourable men like Brutus. What are they saying? They are saying that they want flexibility in the labour laws. Madam, there was a judgement of the Supreme Court giving protection to the right of the worker. You cannot dismiss a worker. Today, a worker cannot be dismissed in this country because there is a judgment of the Supreme Court and this Parliament has passed so many laws. What did the FICCI and the CH say in the economic forum? They said, "Give us flexibility to hire and fire." May I ask the hon. Minister whether the second-generation reforms mean job insecurity? Are you going to proceed in that way? These provisions are for whom? Are the for the poor people's upliftment? Or, are they for the 200 five-star hotels and for other people to live only as bearers? What do you mean by "second-generation reforms"? My appeal to the Finance Minister is this. You think and speak. I do not mind. My party also has some viewpoint on that, maybe, supporting some of the programmes, but at same time, please do not take away the rights and the benefits of the poor, what is the demand now? One of your Ministers, Mr. Ram Naik, said, "We will take away the subsidy on kerosene." And he gives concessions to the honourable men of the business community! What will you do for the poor? You will take away the subsidy on kerosene and take away the subsidy on food. What is the total subsidy in the country? Madam, according to the White Paper, the total subsidy is more than Rs. 1,00,000 crires. What is the subsidy on kerosene and food? The total comes to

Rs. 17,000 crores. You want to take away this and you want to give the rest of Rs.80,000 crores to the big honourable men. You want to give concessions to them. Okay. But I am only saying this. They want everything. My point is, please don't hurt the poor. With these words, I conclude.

SHRI ADHIK SHIRODKAR: Madam, Deputy Chairman, I rise to support the Bill However, while supporting, I want to express two apprehensions. May I invite your attention to Clause 42 *(Interruptions)....* Do you believe in Shakespeare?...*(Interruptions)..*Thank you. I thought you believed only in Marx. Anyway, Madam Deputy Chairperson, may I invite your attention to Clause 42, which is a deeming provision when a company commits offences. There is a deeming provision that every person, whoever is in-charge of, and responsible to the company for the conduct of business, as well as the company, shall be liable. However, there is also a chance to rebut a presumption and there is a proviso. This particular section has been bodily lifted from the Negotiable Instruments Act. Dishonour of a cheque was merely a civil action, in order to make it a penal action, sections 138 to 141 were enacted — making it a penal provision. This provision was there. The result was that in all complaints, or, cases filed under the Negotiable Instrument Act, a blanket statement was made that whosoever are the directors, or, in-charge, or, responsible to the company for conduct of its business, will be roped in. In this regard, the judgements of various High Courts as well as the apex court have been categorical that there has to be an assertion and averment showing how they are responsible, and not merely a blanket statement. If this is not corrected every director will be roped in. Mr. Nani Palkhivala, an eminent jurist, has said that the greatest sin that a person can commit is to be a director of a company. Therefore, in order to avoid this, consideration may be given to it in keeping with the apex court's judgements and modification be made in this.

The second apprehension that I have is in regard to clause 49 (3) and 49(4). Clause 49(3) refers to a period of two years, to which hon. Shri ;Salve has made a reference and said that two years' time may be reduced to 'six months or two months. Madam, if the new Bill is to be made effective from tommorow and if I commit an offence under the old Act today, can it be avoided? Therefore, when the offence is detected, that is the period from Which normally the limitation period starts. However, sub-clause (4) says

that "...all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed." Now, the two years' cap or a limitation of two years, and sub-clause (4) perhaps may be mutually contradictory. They are likely to give rise to apprehensions whether the period of two years is the final cut-off date, or, it will continue even after two years, if the offence is committed under the old Act. This may also be kindly considered. These are the two apprehensions that are likely to cause more litigations, particularly under the Companies Act. But that can b taken care of, if these two aspects are qualified keeping in mind the apex court's judgement.

श्री विजय जे0 दर्डा (**महाराष्ट्र**) **:** उपसभापति महोदया, मैं फाइनेंस मिनिस्टर साहब का अभिनन्दन करता हूं कि उन्होंने "फेमा" बिल इंट्रोड्यूस किया है । सब लोग जानते हैं कि "फेरा" से लोगों को बहुत तकलीफ हो रही थी, वह एक जानलेवा बिल था । कई दिक्कतों के बावजूद एक ऐसी अथॉरिटी बनी थी जिस अथॉरिटी ने बड़े-बड़े उद्योगपतियों, किर्लोस्कर और टाइम्स ऑफ इंडिया के अशोक जैन जैसे व्यक्तियों पर हाथ डाला । हम जानते हैं करीब नब्बे परसेंट ऐसे केस रजिस्टर हुए थे, इनमें से एक परसेंट केस ही ऐसे रह गए थे जो उस पर स्टैंड कर पाए ।

फेरा की एक एकाउन्टेबिलिटी तय होनी चाहिए । एकान्टेबिलटी के बेसिस के ऊपर अगर किसी से क्रिमिनल ऑफेंस होता है तो निश्चित रूप से उसको पनिशमैंट मिलनी चाहिए । जो अथारिटी हैं अगर वह अपनी पावर का मिसयूज करती है तो उनको भी कानून के अंदर पनिशमैंट मिनली चाहिए और उसकी एकाउन्टेबिलिटी फिक्स होनी चाहिए । मैं स्वयं जानता हूं कि हमारे आनरेबल फाइनेंस मिनिस्टर साहब भी इसके शिकार हुए हैं और मैं चाहूंगा कि ऐसे जो लॉ हैं, उनमें सबकी एकाउन्टेबिलिटी फिक्स होनी चाहिए जिसकी वजह से आने वाले समय में ऐसी बातें न दुहराई जाए ।

THE DEPUTY CHAIRMAN : Yes; Mr. Minister, please reply.

SHRI YASHWANT SINHA : Madam Deputy Chairperson, I should begin by expressing my gratitude to the hon. Members of this House for the contribution they have made to the debate on this Foreign Exchange Management Bill. On behalf of the Government, I would like to say, Madam Deputy Chairperson, that we do not have a closed mind. We come to the House with an open mind, and it was because of that reason that we did not have any hesistation in accepting the consensus in this House by referring the Money-Laundering Bill to a Select Committee of this House. But as far

as the present Foreign Exchange Management Bill is concerned, I would entirely agree with hon. Shri Salve, hon. Shri Bagrodia, that the Bill has been long overdue. We are aware of the fact that the Foreign Exchange Regulation Act was substantially amended in 1993, with a view to facilitating the policies which had been adopted immediately after liberalisation began in 1991, and, especailly, the measures of liberalisation on the foreign exchange front, and it was after the substantial amendment in FERA in 1993, that a recommendation was made that the whole scheme of things in the Foreign Exchange Regualtion Act should be looked at; and an Expert Committee was appointed which went into this whole question, submitted its report in 1994 and recommended the repeal of FERA and its replacement by a more modern piece of legislation. It has taken us a long time since 1994 -- almost 6 years — to come to Parliament with the recommendation of that Committee and a Bill in this regard. Now, 1 will begin by saying that this Bill is indeed a link in the process of liberalisation; I have no hesitation in saying it. We are going to liberalise, but we are liberalising with respect to a situation which obtains today and is likely to be valid tomorrow. It is in that context that this Bill has been brought and, therefore, there are many enabling provisions in this Bill. Now, every enabling provision, Madam Deputy Chairperson, is not necessarily something on which the Government is going to act, but when we are preparing a Bill, and bringing it before the House, we are, not only, as I said, bringing it for today's situation, but we are also bringing it for tomorrow's situation and the situation as it will arise the day after tomorrow. Therefore, we have to make a provision in regard to some of those situations that may arise.

Madam, Mr. Salve referred to two issues. One was that the Bill did not make a distinction between an Indian citizen and a non-Indian citizen. In regard to the resident requirement, he agreed that as far as the definition of a person resident in India is concerned, we have by and large accommodated the suggestion of the Standing Committee, and we have incorporated in this latest Bill the definition that is in line with the definition of a resident in other Acts, *viz.* the Income-tax Act, for instance. Therefore, there is no problem in regard to that-182 days immediately preceding the financial year and all that. We have made a distinction in this Bill only between a resident and a non-resident, not deliberately between a citizen and a non-citizen because that was the provision in the FERA. Therefore, any citizen of India, who

was staying abroad and was a non-resident, was-also brought within the mischief of that because of that definition of "Indian citizen." Therefore, this has been deliberately done away with in this Bill

The other issue, to which Mr. Salve referred, was in regard to the sunset clause. The sunset clause deliberately fixed at 2 years. This is being deliberately so fixed because any contravention of the Act which might take place when he was there, has to be dealt' with in that Act,and the enforcement authorities have to be given a reasonable period of time to be able not only to deal with the investigations which are in hand and take them to their logical conclusion but also to deal with any contravention of this Act which might come to their notice during this period. We settled for two years because we felt that it was neither too long nor too short. There has been an expression of opinion in this House. For instance, some of them have called even this Bill as draconian, as giving too much power to the bureaucracy. Some other people have felt that it is very liberal and that that liberalism will be going to cause problems. So, we had to find a via media, and in our deliberations, we came to the conclusion that two years was a reasonable enough sunset-clause provision, and that is why we have settled for two years.

Madam Deputy Chairperson, Mr. Ramachandran Pillai raised a number of issues. I will try to put his doubts at rest. We are dealing with a situation here, which can become very volatile at times. Foreign exchange management is a day-to-day management. If we have an Act of Parliament, which imposes fetters and obligations, which cannot be dealt with on an immediate basis, we shall be giving up our power and our capacity to be able to manage a situation. We are all aware in this House, Madam Deputy Chairperson, of the developing situation in any foreign exchange market anywhere in the world. We have today a situation where our currency is being dealt with in the foreign exchange market everyday.

DR. BIPLAB DASGUPTA (West Bengal): How does management differ from regulation? Why should we change the name? If there are regulatory authorities for so many different things, why do you have a problem with their regulations?

SHRI YASHWANT SINHA: Madam, whenever Member or a Minister speaks in this House, he has a certain structure in his mind. He goes along with that structure. If the hon. Members, sitting here, interrupts again and

again and wants me to respond to every question that that they are raising as I speak, then I will sit down. I will not say anything.

THE DEPUTY CHAIRMAN: Let him first answer, please.

SHRI YASHWANT SINHA: Madam, this happened yesterday also.

THE DEPUTY CHAIRMAN: Dr. Biplab Dasgupta, he is answering to the questions raised by Mr. Ramachandran Pillai. He has formed certain thoughts to answer those points. I was very carefully listening to Mr. Pillai's speech. For the first time I went through the whole Bill looking at every clause, which he mentioned. I was reading it all the time. Now, in answering the pointed questions, he needs some peace of mind to continue. If somebody else does that to you and interrupts you when you are halfway through, you also might get irritated. So, let him answer. Moreover, you did not speak on this Bill, So, there cannot be any question of yours. So, let the hon. Minister answer. Later on we will see what can be done to your questions.

DR. BIPLAB DASGUPTA: But he should answer to my question.

THE DEPUTY CHAIRMAN: But, you did not participate in the debate. Mr. Pillai did.

SHRI YASHWANT SINHA: And his question is not even related to the issue which Mr. Pillai has raised. Why is it FERA or FEMA? This is not the issue he referred to. He referred to various provisions of the Bill and wanted clarifications. I think, it is my duty to answer to those points. If I do not answer them, then at the end of it, there will be walk out saying that I did not answer him.

SHRI GURUDAS DAS GUPTA: You are pre-supposing that.

THE DEPUTY CHAIRMAN: Even I would like to know, because I have read all these clauses. I was reading them all the time he raised them.

SHRI YASHWANT SINHA: He referred to Section 40 -- suspension of operation of this Act. Why did I say there are various provisions which are enabling provisions. I referred to a developing situation in the foreign exchange in the market. It does not mean that any Government — not only we, today, but any other Government tomorrow — will be so wilful as to suspend the operation of this Act completely, because they will have to

come back to Parliament and explain. If we go througb-th; provisions of this Bi2, here it says: "Every notification issued under this Section shall be laid, as soon as it may be, after it is issued before each House of Parliament. The accountability of the Executive to Parliament is complete through this provision. Every time a Government issues a notification, we will have to come and justify before each House of Parliament as to what was the public interest involved. Now, public interest has been deliberately mentioned here. But, this enabling power has been taken, because, as I said, situations develop in the foreign exchange market on the foreign exchange front, which need to be dealt with immediately. It is a matter of minutes, hours and days, where it has to be dealt with. Since we still have provisions in this Bill, which might come as impediments in the way, this kind of enabling power was essential Otherwise it will not be possible for any Government to be able to meet that kind of a situation. Today an apprehension has been expressed in this House about the nature of reserves that this country has, about the Capital Account transactions, about what might happen to our $34 billion of foreign exchange and all that. These are issues which need to be seriously dealt with. They may not be dealt with lightly, because the Rupee is everyday being dealt with in the foreign exchange market. Everyday the R.B.I. is monitoring what is happening in the foreign exchange market; everyday the R.B.I. is keeping a track on the market situation. Is there an undue volatility, because it is the law of supply and demand which is operating on a minute-to-minute basis in the foreign exchange market. That is the kind of volatility which we might have to deal with at some point of time. Therefore, this kind of a provision, clause 40, was necessary. That is why it has been kept in the Bill, with full accountability, as I said, to Parliament.

He has made a point that foreign exchange is going out and it is a matter of great concern. I agree with him. So, I must say that foreign exchange does not occupy the kind of pedestal that it occupied, perhaps, in 1973 or 1947. That is not the pedestal on which we would like to keep foreign exchange, any foreign currency, because we had already moved towards current account convertibility. We have partial capital account convertibility in this country. As we move along, we will make further liberalisation. Therefore, we are not in favour of saying that the dollar is God-and we will put it there, preserve it and worship it. No. Dollar is like any other currency. Every foreign currency is like any other currency. A

time will come when this country will stand up like every other country of the world, with full convertibility to face the world. *..(Interruptions)..* The time has not yet come. But that pedestal at which we used to put the foreign exchange reserves has certainly undergone a change because we have comfortable reserves.

Yesterday, as I was saying in the House, Madam Deputy Chairperson, we have moved very, very cautiously over a period of time; that is the best insurance, in the circumstances.

Now, he has referred to clause 37 (2) and clause 38 (2). He said that this is being done so that we can fix our political opponents of the Government of the day by making any officer, by empowering any officer to investigate any case. As section 38 (1) says it is to enable any Income Tax Officer or Customs Officer or an Excise Officer or any other police officer to discharge any of the functions. These provisions have existed in the former FERA legislation also which we are trying to repeal. Why is this? Because these are again enabling provisions. We have an Enforcement Directorate. But the Enforcement Directorate does not have the kind of spread which some other Departments have.. Therefore, it is quite likely that a situation might arise where neither an Income Tax Officer nor an Excise Officer nor a Customs Officer is present, where we will have to depend on the local police official to enforce the law. Therefore, such a provision has been kept so that it could be done. Now, we are saying, we can authorise an Under Secretary, not below the rank of an Under Secretary, to investigate a case. That power is not being taken with a view to empower an Under Secretary to chase a political opponent. No. Then, the work load becomes such that the existing machinery is not able to deal with it. That is why such a provision has been made. That provision is not something which we are going to use every day. We will have to justify it as to why we are going outside the framework of the Enforcement Directorate and as to why we are enforcing this and empowering another officer.

He also said that under clause 41, we have taken the power to issue directions to the RBI. He was saying that the entire management power that we have given to the RBI is being taken away. Again, I would like to plead mostly humbly, Madam Deputy Chairperson, in every law, the Government has taken upon itself the power to issue directions to any regulatory authority. Yesterday, in the IRDA Bill, we have taken that power with the

Government. Therefore, when the Reserve Bank of India is being authorised to implement the provisions of this Bill, it is essential for the Government to retain the right to issue directions to the Reserve Bank of India. Please read clause 6. We have mentioned, "In consultation with the Government." I think a point was raised that clause 6 is going to open the floodgates and the Reserve Bank of India is going to allow capital account convertibility. No. If you read it , you will find that it says, 'In consultation with the Government." Every policy issue in regard to management of foreign exchange will be decided by the R.B.I., in consultation with the Government, because the Government has a right to formulate a policy, and the Government is accountable to Parliament in respect of that policy. So, it is not that we are going to take away the power of implementation that we have given to this authority, the R.B.I. Now I come to the other point relating to compounding. With regard to this point, the hon. Member has said that there are no guidelines. I would like to inform him that these guidelines would come. We have said: "According to the rules prescribed under this Act." When we prescribe the rules, that will be the right occasion for us to „do so and we shall lay down the guidelines in this regard at that time. So, I would suggest that the various sections which have been incorporated are sections which have been incorporated after a great deal of deliberations and a great deal of thinking has gone into that. I would like to make a few general points.

The hon. Member, Dr. Biplab Dasgupta, has referred to the foreign exchange management. He has put a question as to why we are shifting from regulation to management. We are shifting from regulation to management because a situation has arisen, developments have taken place, where we are today far more comfortable than we were, let us say in 1947 or in 1973, and we are trying to move with that. I agree that we cannot abolish the Indian Penal Code and say that there are no crimes because there is no Indian Penal Code. But countries all over the world are moving towards a more liberal economic regime, and therefore, the definition of economic offences is undergoing a change. A day will come when this country also goes for full capital account liberalisation. At that point of time, most of these legislations that we have will become redundant. In that case, citizens of this country, non-residents, residents, will be free to transact foreign exchange like we hold transaction in rupee, and therefore, there is no point in hanging on to the concept of crime that was there twenty years

ago, twenty-five years ago or fifty years ago. That whole paradigm is changing, is shifting, and that is the reality that we have to take into account. Now it was mentioned that FERA was also draconian. Yes, it was. The rate of success was not one per cent. It was slightly better than that. It was three percent which is not something to be proud of. *(Interruptions)*

SHRI SANTOSH BAGRODIA: As per the information supplied by the Government on the floor of this House, it was stated that the success rate was not more than half per cent.

SHRI YASHWANT SINHA: My information is that the rate of success in terms of prosecution is three per cent. But what I am saying is that a time has come when we have to move forward. FERA had served the purpose when FERA was enacted. That justification for FERA does not exist anymore. The whole situation has changed because there has been liberalisation in management of foreign exchange, and therefore, we are bringing in this legislation. I agree, somewhat belatedly, to deal with the new situation, and let me express not only the confidence of this Government, not only my personal confidence but the confidence of all of us as a nation, that today, India is realty on the move, and I am saying this not because the CH and FICCI might be saying this in their seminars; I am saying this because the world over the quality, the competence, the capability of the Indian is being recognised. If anyone is looking for any proof, they have only to go to the Silicon Valley to find out as to what we can achieve. It is for the India of the 21st century, it is for the India of the new millennium, that we have to prepare ourselves and it is for that India that we have brought this legislation. We will go into the 21st century a few days from now with the confidence that we are going to perform great deeds in that century, in that millennium, as a nation, and, therefore, we have to change our laws to suit our requirements. Thank you.

SHRI SANTOSH BAGRODIA: Mr. Minister, you have not mentioned about the accountability.

THE DEPUTY CHAIRMAN: I think he has mentioned it, because every notification that is issued will have to come to the Parliament. He has mentioned that. I think, perhaps, you did not hear him.

1 shall now put the amendment moved by Shri S. Ramachandran Pillai for reference of the Foreign Exchange Management Bill, 1999 to a Select Committee of the Rajya Sabha to vote. The question is:

'That the Bill to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India, be referred to a Select Committee of the Rajya Sabha consisting of the following Members, Namery:-

1. Shri M Venkaiah Naidu
2. Shri Vayalar Ravi
3. Shri S. Ramachandran Pillai
4. Shri Sanatan Bisi
5. Shri Ranjan Prasad Yadav
6. Shri Gurudas Das Gupta
7. Shri R. Margabandu
8. Prof. Ram Gopal Yadav
9. Dr. Alladi P. Rajkumar
10. Shri Fali S. Nariman

with instructions to report by the first day of the next Session".

The motion was negatived.

THE DEPUTY CHAIRMAN: I shall now put the motion regarding the Foreign Exchange Management Bill, 1999 to vote. The question is:

'That the Bill to,consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India, as passed by Lok Sabha, be taken into consideration".

The motion was adopted

THE DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clauses I to 12 were added to the Bill.

THE DEPUTY CHAIRMAN: There is one amendment to clause 13, by Shri Santosh Bagrodia. Are you moving the amendment?

SHRI SANTOSH BAGRODIA Madam, after listening to him, I am not moving the amendment.

Clause 13 was added to the Bill.

Clause 14 was added to the Bill.

THE DEPUTY CHAIRMAN: There is one amendment to c lause 15, by Shri Santosh Bagrodia. Are you moving the amendment?

SHRI SANTOSH BAGRODIA: Madam, I am not moving the amendment.

Clause 15 was added to the Bill.

Clauses 16 to 36 were added to the Bill.

THE DEPUTY CHAIRMAN: There is one amendment to clause 37, by Shri Santosh Bagrodia.

SHRI SANTOSH BAGRODIA: Madam, before I deckle whether I want to move it or not, I want to speak for a minute.

THE DEPUTY CHAIRMAN: No, you cannot speak. Unless you move it, I will not permit you. Yesterday I showed some special consideration.

SHRI SANTOSH BAGRODIA: Madam, I want to speak for one minute.

THE DEPUTY CHAIRMAN: No, you cannot speak. Either you move it or you just say, "I am not moving".

SHRI SANTOSH BAGRODIA: Madam, I am not moving the amendment.

Clause 37 was added to the Bill.

Clauses 38 to 48 were added to the Bill.

THE DEPUTY CHAIRMAN: There is one amendment to clause 49, by Shri Santosh Bagrodia. Are you moving the amendment?

SHRI SANTOSH BAGRODIA: Madam, I am not moving the amendment,

Clause 49 was added to the Bill.

Clause 'I, the Enacting Formula and the Title were added to the Bill.

SHRI YASHWANT SINHA. Madam, I beg to move that:

"The Bill be passed."

The question was put and the motion was adopted.

DR. BIPLAB DASGUPTA: Madam, we are walking out in protest.

(At this stage, some hon. Members left the Chamber)

MESSAGE FROM THE LOK SABHA

The Mines and Minerals (Regulation and Development) Amendment Bill, 1999

THE SECRETARY-GENERAL: Madam, I have to report to the House the following message received from the Lok Sabha signed by the Secretary-General of the Lok Sabha:

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Mines and Minerals (Regulatin and Development) Amendment Bill, 1999, as passed by Lok Sabha at its sitting held on the 8th December, 1999."

Madam, I lay a copy of the Bill on the Table.

THE DEPUTY CHAIRMAN: Now, we have a statement by Shri Mirasoli Maran, the Minister of Commerce and Industry. Before he makes his statement, I would like to make one mention here that it was decided that in this particular case, since this is a suo motu statement, we will not have any clarifications. The Members wanted a fullfledged discussion. Time is available tomorrow and the hon. Minister has kindly agreed to take up the matter tomorrow for discussion. I think it is right. Because if we discuss this after four days, it will lose its impact. Since the statement is being made today, we will have a two-and-a-half hour Short Duration Discussion